Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Bradley S. Logan, MD.
Petitioner

v.

Leon E. Everett, MD, Virgil H. Crowder, MD.
Jack Buck, Crockett Hospital, LLC,
and LifePoint Hospitals, Inc.
Respondents

On Petition for Writ of Certiorari
To The Supreme Court of Tennessee

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the "privilege" within the Tennessee Peer Review Law of 1967 to be read so broadly as to become an "absolute privilege" thus rendering the "qualified immunity" recognized by the Tennessee Supreme Court in Eyring meaningless and useless, creating a class of privilege rarely supported by courts or legal authorities?

2. Can the constitutionally guaranteed rights of property and of due process be extinguished by the Tennessee Peer Review Law statute and be in compliance with the "fundamental fairness" provision of the Fourteenth Amendment of the U.S. Constitution as the lower courts' rulings of absolute privilege would provide?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Bradley S. Logan, MD was the Plaintiff in the circuit court of the State of Tennessee and the Appellant in the Appeals Court of the State of Tennessee.

Respondents Leon E. Everett, MD, Virgil H. Crowder, MD, Jack Buck, Crockett Hospital, LLC, and LifePoint Hospitals, Inc. were defendants in the circuit court and Appellees in the Tennessee Appeals Court.

The constitutionality of a statute of the State of Tennessee is drawn into question thus 28 U.S.C. 2403(b) may apply and the Attorney General for the State of Tennessee has been served in accordance with Rule 29.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner respectfully petitions this Court for a Writ of Certiorari to review the decision of the Tennessee Supreme Court in this matter.

OPINIONS BELOW

The opinion of the Court of Appeals is attached here as Appendix 1 and the Order denying the Petition for Writ of Certiorari to the Tennessee Supreme Court is attached as Appendix 2.

JURISDICTION

The judgment of the court of Appeals of Tennessee at Nashville was filed January 27, 2006. The Supreme Court of the State of Tennessee issued its Order denying the Petition for Writ of Certiorari on August 28, 2006. The jurisdiction of this Court rests on 28 U.S.C. 1254(1). The notifications required by Rule 29.4 (C) have been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The main statute under review is T.C.A. 63-6-219, attached here as Appendix 3, with constitutional issues involving the fundamental fairness provisions 14th Amendment of the United States Constitution incorporated. Section 1 of the Fourteenth Amendment reads:

> All persons born or naturalized in the United States. and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The potential constitutional issues in the case were addressed by the Petitioner in a brief to the Court of Appeals:

> Even absolute executive privilege, as described above, is known to be not always absolute, but subject to instant existence judicial review as in the United States v Nixon, 418 U.S. 683 (1974). From this case, although in the context of a criminal investigation, it is clear that the right to the production of all evidence has constitutional dimensions, especially as it is applied when liberty is an issue, when evidence is central to fair adjudication, when there is no evidence of possible injury to a public interest, and when there is only a generalized interest of confidentiality. The generalized assertion of a privilege, even a so-called absolute privilege, must yield to the specific need for evidence at trial, especially when abuse of privilege is at issue. (Brief of Appellant p. 9)

STATEMENT OF THE CASE

The Petitioner is a physician who practiced in Florida prior to moving to practice at Crockett Hospital in Lawrenceburg, Tennessee, in 1998. In 2001 he entered negotiations with Skyline Medical Center in Nashville, Tennessee, which resulted in a Recruiting Agreement that was executed in November, 2001. After the Agreement was signed and as part of the application for hospital privileges, Skyline

Medical Center contacted no references given by the Petitioner but only other members of the medical community in Lawrenceburg. Notes were taken during these conversations, and these were disseminated to members of the Credentials Committee at Skyline Medical Center. Prior to the meeting of the Credentials Committee, Skyline rescinded the Recruiting Agreement with the Petitioner, citing his failure to begin the full time practice of medicine in January 2001. Because the hospital was well aware that the Petitioner's office space was not available secondary to the hospital's contractor failing to complete construction in a timely manner, and given that no such action had been taken against the other physician offered the same agreement, the Petitioner pressed Skyline for answers explaining the disparity, and was told that individuals from Lawrenceburg had given unfavorable comments and that failure of the application for privileges was inevitable. The Petitioner filed in July 2002 an action in Circuit Court for interference with a business relationship and named Dr. Leon Everett as the Defendant, with John Does listed as well. Dr. Virgil Crowder, Jack Buck (CEO of Crockett), Crockett Hospital, and Lifepoint Hospitals (the parent company of Crockett) were later added as defendants. Defendants moved for summary judgment in September 2003, citing the privilege provisions of the Tennessee Peer Review Law; their motions were denied and documents relating to the defendants' actions were introduced by the Petitioner and accepted by the district court in February 2004. The defendants once again moved for summary judgment a few months later, citing the same arguments, and the district judge reversed his previous position and granted summary judgment in November 2004. The circuit judge in his ruling stated that he interpreted the Tennessee Peer Review Law as granting "absolute privilege," thereby constraining the plaintiff from presenting any materials to demonstrate that the qualified immunity outlined

in the Tennessee Peer Review Law did not apply in this circumstance, because information provided was false and known to be false, and despite his admission of those materials into the record previously. A timely appeal was made to the Tennessee Court of Appeals and oral arguments were heard in October, 2005. The Court of Appeals upheld the district court ruling of "absolute privilege." A timely appeal was submitted to the Tennessee Supreme Court, which, without comment, denied the application on August 28, 2006.

REASONS FOR GRANTING THE PETITION

1. **The decision of the Tennessee Court of Appeals in the instant case is at variance with the ruling of the Tennessee Supreme Court in Eyring v. Fort Sanders, et.al.**

In Eyring, a physician became involved in a dispute with a hospital which had terminated his clinical privileges. The trial court in that case initially allowed limited discovery so that the plaintiff could attempt to determine malice, good faith, and reasonable knowledge or belief; upon appeal by Eyring later in the proceedings, the Court of Appeals reversed this decision by the trial court. The Supreme Court, however, supported the trial court's decision:

> It appears, however, that the broad language extending the privilege must be reconciled with the statutory requirement that the plaintiff bear the burden of producing evidence of malice and bad faith. We therefore agree with the trial court's ruling allowing Eyring to conduct discovery for the limited purpose of investigating the committee members' good faith,

> malice, and reasonable belief, but prohibiting any inquiry into the peer review process itself.

The applicability of that decision by the Tennessee Supreme Court to the instant case is clear. The Tennessee Supreme Court has upheld that the immunity granted by TPRL is a *qualified* immunity, noted and discussed before that Court discussed the need to reconcile the burden of proof of malice and the qualified immunity granted:

> "We have determined that the Peer Review Law grants hospitals both a qualified immunity from liability for damages and a privilege from discovery of the peer review process."

The Court of Appeals is, in the instant case, repeating its error from Eyring regarding discovery; the Supreme Court in Eyring, while affirming the Court of Appeals' opinions regarding the trial outcome, disagreed with the appellate court's position on discovery. The Tennessee Supreme Court had opportunity to revisit the same principle on a similar issue in this case, but declined, without comment, to do so, necessitating the appeal to this Court.

Other high courts have recognized the balance that must be struck between privilege and qualified immunity. In Mohinder Chadha v. Charlotte Hungerford Hospital et al the Connecticut Supreme Court under Connecticut's peer review statute found essentially what the Petitioner argues in this matter:

> "There is no dispute that the immunity afforded under 19a-17b and 19a-20 is qualified, rather than absolute, because those provisions expressly except from their

purview conduct and statements that are motivated by malice."

The Connecticut Supreme Court noted by quoting the New Mexico Supreme Court in Leyba v. Renger, 114 N.M. 686, 845 P.2d 780 (1992):

> "The members of peer review committees are often in direct competition with those being reviewed, and the system has the potential for abuse of the person being reviewed. Possession of hospital privileges...is crucial to a physician's success, and a negative decision could be tantamount to excluding a doctor from the profession as a whole ... This potential for abuse has been recognized by other courts. See, e.g. Nurse Midwifery Assocs. v. Hibbett, 918 F. 2d 605, 614 (6th Cir. 1990) (noting that anticompetitive concerns are raised when competing physicians are making privilege recommendations concerning a competitor), [modified on other grounds, 927 F.2d 904 (6th Cir.). cert. Denied sub nom. Nurse Midwifery Associates v. Hendersonville Community Hospital, 502 U.S. 952], 112 S. Ct. 406, 116 L. Ed. 2d 355 (1991); Memorial Hosp. Fort McHenry County v. Shadur, 664 F.2d 1058, 1063 (7th Cir. 1981) (pointing out the potential for physicians to use the framework of peer review groups for anticompetitive purposes).

The reconciliation of immunity and privilege has been addressed in arenas other than medicine. In addressing the issue of confidentiality of a defendant's newsgathering and creative processes for a story, this Supreme Court ruled in Herbert v. Lando, 441 U.S. 153 (1979):

> Evidentiary privileges in litigation are not favored, and even those rooted in the Constitution must give way in proper circumstances. The President, for example, does not have an absolute privilege against disclosure of materials subpoenaed for a judicial proceeding. *United States v. Nixon,* 418 U.S. 683 (1974). In so holding, we found that although the President has a powerful interest in confidentiality of communications between himself and his advisers, that interest must yield to a demonstrated specific need for evidence. As we stated, in referring to existing limited privileges against disclosure, "(w)hatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth." Id., at 710.

The Tennessee peer review law grants certain immunities to two classes of individuals: those on peer review committees, and those providing information to those committees. This case differs from Eyring in that the immunity now at question is that granted to providers of information to peer review committees, where Eyring addressed directly the issue of immunity of the committee members.

The immunity granted to those providing information to peer review committees is provided "unless such information is false and the person providing it had actual knowledge of such falsity". At the heart of this case is a dispute over allegedly knowingly false statements made to a peer review committee proffered during a contract negotiation and application for hospital privileges, statements which led to the rescinding of a contract prior to a decision regarding those clinical privileges. Documents such as telephone logs and affidavits from persons with knowledge of the circumstances

and which represent material facts in dispute not only exist, but were entered into the record by the circuit court and were available to the Court of Appeals. The plaintiff's attempts at discovery were not mere "fishing expeditions" into the peer review process, but were directed to proving or disproving the veracity of the statements offered and then recorded in the telephone logs, and to proving the knowledge of their veracity by those who made them.

In Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990), this Supreme Court held that, while statements that cannot be reasonably interpreted as stating or implying actual facts about an individual are protected, those statements which imply facts which are susceptible of being proved true or false do not enjoy either Constitutional or common law protection merely because they are couched in the *language* of opinion. For example, the Court reasoned,

> If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar." *Ibid.* 19,20

By the standard of the opinion rendered in Eyring, the decision by the Court of Appeals to affirm the trial court's granting summary judgment on the basis of absolute privilege is clearly erroneous and the case should be remanded to the district court for further discovery and trial.

2. **If upheld, the de facto ruling of absolute privilege by the Court of Appeals would render "meaningless and useless" the conditional immunity provision of the Tennessee peer review law, and would create an "absolute privilege," which is neither in the statute on its face nor upheld by rulings of the Tennessee Supreme Court. Absolute privilege in the peer review setting represents an issue of first impression to this honorable Court.**

Privilege has been defined as the right to refuse to divulge information obtained in a confidential relationship. The context of its use, as well as statute, define its scope and boundaries.

The analysis for determining whether a conditional privilege exists involves a two-step process. First, it must be determined whether "the attending circumstances of a communication occasion a qualified privilege," which means that a determination of whether the requirements for invoking the privilege are satisfied. Soentgen v. Quain & Ramstad Clinic, P.C., 467 N.W.2d at 78-79. The second step of the analysis requires a determination of whether the privilege was abused, which requires that the grounds for abuse—malice or lack of good faith—be defined. Id. While the first step is generally determined by the court as a matter of law, the second step of determining abuse of a conditional privilege or malice is generally a fact question for the jury. W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser & Keeton on Torts 115, p. 835 (5th Ed. 1984); Restatement (Second) of Torts 619. The conditional privilege is abused, and thus inapposite, when the "defendant steps outside the scope of the privilege, or abuses the occasion." Id., p. 832.

With these standards in mind, one must consider the issues in the instant case. First, there is no mention of the word "absolute" within the Tennessee Peer Review Law and specifically there is no mention of absolute privilege nor absolute immunity. There is, in the Tennessee Peer Review Law, specific discussion of qualifications to immunity for peer review committees:

> "...To this end, peer review committees should be granted certain immunities relating to their actions..." contingent upon their duties and activities being "made or taken in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist." [emphasis added]

The Tennessee Court of Appeals has stated:

> "It is a general rule that no intent may be imputed to the legislature in the enactment of a statute other than such as is supported by the face of the statute itself." Madison Loan & Thrift Co. v. Neff, 648 S.W.2d 655,657 (Tenn App. 1982).

To argue that a mechanism must exist to evaluate the "good faith, malice and reasonable belief" of individuals involved in the peer review process is *not* to proffer an exception to the immunity offered to individuals who qualify for it, as argued in lower courts by defendants' counsel, but rather to echo the words of the Tennessee Supreme Court that a reconciliation must occur between the statutory requirement to prove malice and the privilege and immunity described. If such a need for reconciliation exists for 'peer review committee' immunity it

must also exist for 'providers of information' immunity. If no mechanism exists to reconcile qualified immunity and privilege a de facto 'absolute privilege' is created, the qualified immunity described in the statute is thus rendered, in the Court of Appeals' own words in Madison, "meaningless and useless."

3. Limiting the extensions of absolute privilege to fields where no safeguards are available to prevent an abuse of its use is supported by virtually all courts and text authorities.

"It is the well-established, general law that the absolute privilege applies in three general areas: (1) judicial proceedings; (2) legislative proceedings, and (3) acts of important government executives." Engelmohr v. Bach, 66 Wn.2d 104. In Mills v. Denny, 245 Iowa 584 588, 63 N.W.2d 222, 40 A.L.R2d 933 (1954), the Iowa Supreme Court stated:

> "Extension (of absolute privilege) to fields where no safeguards or remedies are found has been uniformly refused by the courts and justly so, for absolute immunity in defamation matters presents a conflict between two American principles equally regarded in the law, i.e., the right of an individual on one hand to enjoy his reputation unimpaired...and on the other hand the necessity in the public interest of a free and full disclosure of facts in the conduct of the Legislative, Executive and Judicial Departments of Government."

Absolute privilege is thus permitted in very few and carefully defined circumstances, according to the courts. Most conditions involve an environment where statements that are privileged are subject to judicial scrutiny and review, as well as testing by the opposition through cross examination, in

hopes of protecting against fraud. In non-judicial settings, this Supreme Court has ruled on the pitfalls of a privilege that would shift the balance between freedom of discussion and expression and freedom without accountability:

> But if the claimed inhibition flows from the fear of damages liability for publishing knowing or reckless falsehoods, those effects are precisely what *New York Times* and other cases have held to be consistent with the First Amendment. Spreading false information in and of itself carries no First Amendment credentials. "(There) is no constitutional value in false statements of fact." *Gertz v. Robert Welch, Ind.,* 418 U.S. at 340.

While the instant case entertains issues of peer review rather than journalism, the principles are similar: freedom of evaluation must be balanced by accountability. Even an appeal to the greater good for patient welfare does not extinguish the rights of individual physicians to ensure that information used in evaluating their professional competency is correct and true. Clearly, there is no constitutional value, no judicial value, nor, in this case, immunity for false statements of fact, even and perhaps especially when they are made in peer review proceedings whose outcomes affect the ability of a physician to practice his profession.

4. The Court of Appeals decision, by opposing the Tennessee Supreme Court's previous opinions of reconciling the burden of proof obligations and immunity and privilege issues, violates the "fundamental fairness" provisions of the Fourteenth Amendment of the Constitution, since it would have the unintended effect of allowing loss of a property right without the evidentiary protections of due process.

In its interpretation of the Tennessee Peer Review Law, the Tennessee Court of Appeals would have us believe that it was the intent of the legislators of the State of Tennessee to violate the Tennessee State Constitution and the Constitution of the United Sates of America. The Fourteenth Amendment states:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of Tennessee states:

> That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

The lower court would have us believe that through an unprecedented interpretation of the TPRL the right of an individual and a certain class of individuals, physicians, to enjoy reputation unharmed, and thus to enjoy the property right to practice their profession, can be deprived from them, by liars, through the mechanism of statutory fiat. The court would have us believe that legislators, in the name of the protection of one class of person, can abrogate unalienable rights guaranteed by the Constitution without due process and with impunity.

In a previous ruling, the Tennessee Supreme Court appeared to recognize the need for protection of physicians from malicious activities. That Court ruled:

> "Everyone has the right to establish and conduct a lawful business or engage in a lawful profession, and is entitled to the protection of organized society, through its courts, whenever that right is unlawfully invaded. An actionable wrong is established against anyone who is shown to have intentionally interfered with that right, without justifiable cause or excuse. It is, therefore, an actionable wrong for two or more persons to conspire maliciously and without justification or excuse to injure or damage another in the conduct of a lawful business or profession. Furthermore, it is not necessary to expressly allege malice so long as it is alleged that the damage was done by the defendants intentionally and without legal justification, for malice is inferred from such allegations." Nashville Memorial Hospital, Inc., v. Binkley, 534 S.W.2d 318.

The ability to practice one's profession has been recognized as a liberty and property right by numerous legal authorities. "Medical staff privileges embody such a valuable property interest that notice and hearing should be held prior to its termination or withdrawal, absent some extraordinary situation where a valid government or medical interest is at stake." Northeast Georgia Radiological Associates, PC v. Tidwell, et al, 607 F 2d 507 at p. 511. "The clinical privileges alleged by plaintiffs' complaint are sufficiently analogous to a physician's staff privilege to make out a colorable claim to a property interest under the due process clause." In Yurko v. Corteret County General Hospital Corp. No. 82-2068, 4th

Cir., (1983) Unpublished. Medical staff privileges have been recognized to be a property interest protected by the Fourteenth Amendment, particularly when they may only be limited or revoked after a hearing. See Setliff v. Memorial Hospital of Sheridan County, 850 F.2d 1284 (10th Cir. 1988). The liberty interest protected by due process includes an individual's freedom to earn a living. Setliff v. Memorial Hospital of Sheridan County, supra; see Paul v. Davis, 424 U.S. 693, 96 S.Ct, 1155, 47 L.Ed.2d 405 (1976).

The application in the instant case is that the actions of the defendants interfered with the business relationship between the Petitioner and Skyline Medical Center, causing rescission of the executed recruiting agreement as well as the denial of clinical privileges at Skyline. The current interpretation of the TPRL by the Tennessee Appeals Court and apparently upheld by the Tennessee Supreme Court, is one that supports lying, destroys contracts and abridges property rights, simply by expansively precluding all evidence in derogation of the truth.

CONCLUSION

Because the ruling by the Tennessee Appeals Court in the instant case is at variance with previous rulings by the Tennessee Supreme Court, because the ruling would create an absolute privilege that is not defined within the Tennessee Peer Review Statute and is a privilege reserved for matters amenable to judicial review or national security, and because the ruling would abrogate due process and property rights given Constitutional guarantees, the Petitioner prays this Honorable Court would issue a writ of certiorari to the Tennessee Supreme Court in order to maintain judicial fairness in the interpretation of the Tennessee Peer Review Law, especially as it relates to protecting the due process and property rights of the physicians governed by it.

Respectfully submitted,

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Appendix 1

Ruling and Opinion of Tennessee Court of Appeals

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 12, 2005 Session

F I L E D
JAN 27 2006
Clerk of the Courts

BRADLEY S. LOGAN, M.D. v. LEON EVERETT, M.D., VIRGIL
CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC., and
LIFEPOINT HOSPITALS, INC.

Direct Appeal from the Circuit Court for Davidson County
No. 02C-2090 Hon. Hamilton V. Gayden, Jr. Circuit Judge

No. M2005-00012-COA-R3-CV

Plaintiff sued defendants, claiming defendants intentionally interfered with a business relationship by making false and malicious statements about him. The Trial Court granted defendants summary judgment on the grounds defendants were immune pursuant to Tenn. Code Ann. 63-6-210(d)(1)(2) for providing information to a credential committee investigating plaintiff. On appeal, we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which D. MICHAEL SWINEY,J., and SHARON G. LEE, J., joined.

Bradley S. Logan, M.D., Nashville, Tennessee, pro se.

Robert L. Trentham and Taylor B. Mayes, Nashville, Tennessee, for Appellee, Virgil Crowder, M.D.

Andrew S. Naylor and Stanley E. Graham, Nashville, Tennessee, for Appellees, Leon Everett, M.D., Jack Buck, Crockett Hospital, LLC,, and Lifepoint Hospitals, Inc.

OPINION

TRIAL COURT PROCEEDINGS

Plaintiff, a physician, sued Dr. Leon E. Everett and John Does A thru I, and averred he was a licensed physician, and that Dr. Everett practices medicine in Lawrenceburg, Tennessee where he is the Chief of the Medical Staff of Crockett Hospital.

The Complaint averred that in 2001 plaintiff began negotiations with Skyline Medical Center ("Skyline") with the purpose of moving his medical practice from Lawrenceburg, Tennessee, to Nashville, and that plaintiff and Skyline entered into a Recruiting Agreement wherein Skyline promised

to guaranty plaintiff a minimum monthly income for the first year of his practice in Nashville. The promise was conditioned upon plaintiff obtaining and maintaining full medical staff privileges at [Skyline] " and engaging "in the full-time private practice of medicine as (an) Ob/Gyn in [Nashville]" by January 1, 2002.[1] Plaintiff further averred that he applied for medical privileges at Skyline, but was informed that his application would be rejected due to negative statements made by individuals at Crockett Hospital. Further, that plaintiff learned that none of the physicians contacted by Skyline during the application process gave him a positive reference, and his Complaint concluded that defendants committed tortious interference with the contract between plaintiff and Skyline by making false and malicious statements in bad faith.

Subsequently, the Trial Court allowed plaintiff to amend his Complaint to add Virgil H. Crowder, M.D.; Crockett Hospital, LLC ("Crockett"); and LifePoint Hospitals, Inc. ("LifePoint") as defendants.

On December 3, 2003, Dr. Crowder filed a Motion for Summary Judgment and a Statement of Undisputed Facts. The Motion argued:

(Dr. Crowder) made no statements whatsoever to representatives of [Skyline] concerning the application by the [Plaintiff . . . to (Skyline) for medical staff privileges and therefore, [Plaintiff's] claims against Dr. Crowder necessarily fail to state a claim upon which relief could be granted for intentional interference with a business relationship as a matter of law.

The Trial Court denied Dr. Crowder's Motion, and Dr. Everett then filed a Motion for Summary Judgment on the grounds that plaintiff had executed a Release, which released from liability, "all representatives of the hospital and its medical staff for their acts performed in good faith and without malice in connection with evaluating my application and my credentials and qualifications". A copy of the Release was filed, along with a Motion, as well as excerpts from the deposition of plaintiff. One of the more relevant exchanges from the deposition is;

Q. So you don't know what Dr. Everett said [to the credentials committee]?

A: Of course not.

Q: Do you have any knowledge or information that would tend to show or

---

[1] Plaintiff did not engage in full time practice as an Ob/Gyn in Nashville by the January 1, 2002 deadline, and Skyline rescinded the Recruiting Agreement on February 20, 2002.

suggest that anything Dr. Everett may have said to any one was untrue or was a lie?

A: No.

Q: Do you have any facts or anything to show that would suggest that anything that Dr. Everett may have said to anyone with regard to your application at Skyline was made in bad faith?

A: Yes

Okay. Tell me what the proof is, facts, or hearsay.
Okay. . . . Kelly Duggan [a Skyline attorney] communicated to me that none of the physicians that were contacted by Skyline . . . gave (me) a positive reference. Mr. Klein (Skyline's CEO) has also said that it was the telephone conversation with physicians in Lawrenceburg that made the credentials committee uncomfortable.

Q: Anything else?

A: Dr. Everett has told me that he spoke to somebody at Skyline . . . . Dr. Everett has also told me that he told them that my charts were reviewed.

Q: And your charts were, in fact, reviewed?

Yes.

A: Okay. So then Dr. Neal [President of Skyline's medical staff spoke to Dr. [Janice] Huckaby [Plaintiff's friend and colleague] and said that he spoke to the physicians in Lawrenceburg and that they did not give [me] a positive reference, that he

took each of those persons off of the record and had a conversation with them that also made him feel uncomfortable.

Q : Anything else?

A: At this time, no.

Plaintiff responded to these Motions for Summary Judgment, but did not file responses to the Statement of Undisputed Facts filed by Dr. Everett and Dr. Crowder. Regarding the doctors' arguments that they were immune pursuant to Term. Code Ann. 63-6-219(d)(2), plaintiff argued that there was a factual issue as to whether this immunity applied because this immunity is conditioned on acting in good faith without malice and the immunity could be lost if the doctors provided false information and actually knew the information was false. Regarding the doctors' assertion there was no evidence to show that they engaged in the alleged tortious conduct, plaintiff argued that his search for evidence was hampered by assertions of the peer review privilege and that the documents evidencing communication between representatives of Skyline and doctors at Crockett raised the possibility of false and malicious statements.

Two of the documents relied on by plaintiff, were telephone verification forms, one of which lists comments made by the Chief of Staff at Crockett (i.e. Dr. Everett). The comments listed on the form include the following: "has had some issues–now resolved[;] lots of politics,[;] poor relationship with peers[;] some complications-

reviews done[;] recommended.". The other form is not dated and lists comments made by a former Chief of Staff at Crockett. Plaintiff also attached, as an exhibit to his Response to Dr. Crowder's Motion. a letter dated February 22, 2002, written on Dr. Crowder's stationary, which was not signed and addressed to Skyline's Credentials Committee. The letter included the following comments:

(Plaintiff s) charts were reviewed at my request because I thought that his surgical complication rates might be high. . . . The Surgery [Committee] had reviewed all instances of complications for [Plaintiff] as a regular part of its function. No finding of complications was ever categorized as other than "a known complication of surgery appropriately handled.". . . (Plaintiff's] complication rate was compared to system wide averages and his average was actually below the system average. Outside review was performed. The Medical Executive Committee met, reviewed the findings and no recommendation for anything other than observation for 6 months was made.

The Trial Court granted Dr. Crowder's and Dr. Everett's Motions for Summary Judgment.

Plaintiff then filed a Motion to Amend his Complaint and added Jack Buck as a Defendant. This Complaint averred that Buck was the Chief Executive Officer of Crockett and that he committed intentional interference with the business relationship between Plaintiff and Skyline by knowingly making false statements to Skyline's CEO about Plaintiff s abilities.

Crockett, LifePoint, and Mr. Buck filed a Motion for Summary Judgment and
Statement of Undisputed Facts based upon the same grounds presented by Drs. Everett and Crowder. In plaintiff's Response to the Motion, plaintiff attached a telephone verification form listing comments regarding plaintiff made by Buck to Robert Klein, Skyline's CEO. The form listed these comments:

very negative overall, both clinical and financial issues[;] :4 months behind rent[;]behind in ultrasound lease payments [;] spoke of numerous surgical mishaps', 'sloppy'[;] . .. bad reputation.

Plaintiff alleged these comments evidenced false statements made by Buck, and served a subpoena upon Klein for a deposition and specified documents, as well as a subpoena upon Skyline to produce specified documents. At these parties' request, the Trial Court entered a Protective Order denying discovery and granted defendants' Motion for Summary Judgment.

ISSUES RAISED ON APPEAL

1. What is the extent of the privilege from discovery created by the Tennessee Peer Review Law of 1967?

2. Whether summary judgment was appropriate because the Tennessee Peer Review Law of 1967 bars any claim for liability against the Appellees.

3. Whether summary judgment was appropriate because the Appellant released all of his claims against each Appellee.

4. Whether summary judgment was appropriate because, as a matter of law, the Appellees did not tortiously interfere with the Appellant's "business relationship" with Skyline.

Our review of summary judgments are de novo "without any presumption of correctness accorded the trial court's judgment." Guy v. Mutual of Omaha Ins. Co., 79 S.W.3d 528, 534 Tenn. 2002). Our task in deciding the propriety of a summary judgment is to determine whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guy, (quoting Term. R. Civ. P. 56.04). When making this determination, the court must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." Staples v. CBL to Assocs., Inc, 15 S.W.3d 83, 89 (Tenn. 2000). If both the facts and conclusions to be drawn there from permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." Seavers v. Methodist Med. Ctr. of Oak Ridge, 9 S.W.3d 86, 91 Tenn. 1999).

The moving party must do more than make conclusory assertions that the nonmoving party has no evidence." Byrd v. Hall, 847 S.W.2d 208, 215 Tenn. 1993). Instead, the moving party must either affirmatively negate an essential element of the nonvoting party's claim" or conclusively establish an affirmative defense that defeats the nonmoving

party's claim." Id. at 215 n.5. At this juncture, the nonmoving party may not simply rely upon the allegations or denials of his pleadings," but must establish the existence of genuine disputed issues of material fact. Id. Defendants argued below, and on appeal, that the Tennessee Peer Review Law of 1967 (the "TPRL") creates an absolute privilege protecting their communications with Skyline regarding Plaintiff s application for privileges. Plaintiff counters that the privilege from discovery is not absolute.

The General Assembly enacted the TPRL in order to create an "incentive for the medical profession to undertake professional review." Tenn. Code Ann. 63-6-219(19(2) (2005). As part of this incentive, the General Assembly decided that peer review committees must be protected from liability for their good faith efforts." The TPRL includes the following provision:

(d)(1) All state and local professional associations and societies and other organizations, . . .any person who participates with or assists a medical review committee with respect to its functions, or any other individual appointed to any committee, as such term is described in subsection (c), is immune from liability to any . . . individual or organization for furnishing information . . . to any such committee or for damages resulting from any decision . . . entered or acted upon by such committees undertaken or performed within the scope or function of the duties of such committees, if made or taken in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.

Tenn. Code Ann. 63-6-219(d)(1) (2005). (Emphasis supplied). As the foregoing establishes, immunity is conditioned on acting "in good faith, and without malice, and on the basis of facts reasonably known or reasonably believed to exist." In 1988, General Assembly amended the original Act, as it applies to those who provide information to medical review committees. 1988 Term. Pub. Acts, ch. 609, § 2. The following language was added to the Act:

(2) Notwithstanding the provisions of subdivision (d)(l), any person providing information, whether as a witness or otherwise, to a medical review committee regarding the competence or professional conduct of a physician is immune from liability to any person, unless such information is false and the person providing it had actual knowledge of such falsity.

Tenn. Code Ann. 63-6-2194(d)(2) (2005) (emphasis supplied). The foregoing phrase establishes that any further consideration of an information-provider's good faith or malice is unnecessary. Ironside v. Simi Valley Hosp., 188 F.3d 350, 353 (6th Cir. 1999). Beyond a showing that they assisted a review committee, participants in the medical
review process do not have to prove their eligibility for immunity. Instead, a member of a medical review committee, or person reporting information to a medical review committee, is presumed to have acted in good faith and without malice. Any person alleging lack of good faith has the burden

of proving bad faith and malice." Tenn. Code Ann. 63-6-219(d)(3). Thus, where a plaintiff wishes to demonstrate that a provider of information to a medical review committee is ineligible for immunity, the plaintiff must prove the information was false and the provider had actual knowledge of its falsity.

The TPRL also protects the information submitted to and generated by such review committees by making it confidential and privileged. Tenn. Code Ann. 63-6-219(e). Plaintiff argues there is an implied exception to this privilege which gives the party opposing immunity the right to discover information otherwise privileged under subsection (e). We cannot agree with this interpretation of the provision. The General Assembly expressed its intent regarding subsection (e) as follows:

It is the stated policy of Tennessee to encourage committees made up of Tennessee's licensed physicians to candidly, conscientiously, and objectively evaluate and review their peers' professional conduct, competence, and ability to practice medicine. Tennessee further recognizes that confidentiality is essential both to effective functioning of these peer review committees and to continued improvement in the care and treatment of patients. Tenn. Code. Ann. 63-6-219(b)(1).

According to the plain terms of Subsection (e), the privilege from discovery is broad and protects "all information, interviews, incident or the reports, statements, memorandums other data furnished to any (medical peer review) committee."

The plain terms of this section provide for only three limitations in the privilege's scope. First, the privilege only protects information "furnished to, or generated by, a medical peer review committee." Second, the privilege only applies in civil actions. Third, the privilege applies to neither "records made in the regular course of business" nor to "records otherwise available from original sources" which are simply presented during the proceedings of a medical peer review committee.

Under plaintiff s interpretation of subsection (e), a participant in the peer review process couldn't assert his immunity without simultaneously losing enjoyment of the privilege from discovery created by the subsection. Accordingly, plaintiff's interpretation would have the effect of rendering the privilege created by subsection (e) effectively void. "It is a well-settled principle of statutory construction that statutory provisions should be construed in a manner that will not render them meaningless or useless." Hoyer-Schlesinger-Turner, Inc. v. Benson, 479 S.W.2d 223, 225 Tenn. 1972). Plaintiff argues that the Tennessee Supreme Court has recognized an implied exception to the peer review privilege in Eyring v. Fort Sanders Park-west Med. Ctr., Inc., 991 S.W.2d 230 (Tenn. 1999). In Eyring, the plaintiff was a licensed physician with staff privileges at the defendant hospital, and his privileges were later revoked by a medical review committee at the

hospital. The plaintiff sued the hospital, charging intentional interference with a business relationship. The Trial Court allowed the plaintiff to conduct discovery of peer review participants for the limited purpose of allowing the plaintiff to discover the participants' good faith, malice, and whether they acted on the basis of facts reasonably known or believed to exist, but declined to allow plaintiff to conduct discovery regarding the peer review process itself.

Prior to 1999, the second sentence of the peer review privilege provision stated, "All such information, in any form whatsoever, so furnished to, or generated by, a medical review committee shall be privileged communication subject to the laws pertaining to the attorney-client privilege." 1994 Tenn. Pub. Acts, ch. 732, j 6. The plaintiff argued that the language "subject to the laws pertaining to the attorney-client privilege" granted an implied exception to the confidentiality privilege, which argument was rejected by this Court. The plaintiff appealed to the Supreme Court, which affirmed the Trial Court's approach with the following reasoning:

This statute creates a broad privilege from disclosure for "(a)ll information, interviews, incident or other reports, statements, memoranda or other data ... and any findings conclusions or recommendations resulting from the (committees') proceedings." In our view, this broad language encompasses any and all matters related to the peer review process itself. We reject Eyring's contention that the statute grants an implicit right to any information "furnished to or resulting from the

proceedings" of the peer review committees. It appears, however, that the broad language extending the privilege from discovery must be reconciled with the statutory requirement that the plaintiff bears the burden of producing evidence of malice and bad faith. We therefore agree with the trial court's ruling allowing Eyring to conduct discovery for the limited purpose of investigating the committee members' good faith, malice, and reasonable knowledge or belief, but prohibiting any inquiry into the peer review process itself. Accordingly, we conclude that the broad language of the statute encompasses any and all matters related to the peer review process. Eyring, p.239 (citations omitted) (emphasis supplied).

The Supreme Court clearly rejected the plaintiff's contention that the statute grants an implicit right to any information furnished to or resulting from the proceedings of the peer review committees, and prohibits any inquiry into the peer review process itself. In the Court's words, "the broad language of the statute encompasses any and all matters related to the peer review process."

We conclude there is no implied exception to the rights of privilege and confidentiality created by the statute.

Next, plaintiff argues that the immunity from civil liabilities is conditional, and whether the relevant conditions have been satisfied is a genuine issue of material fact. Defendants counter that summary judgment was appropriate because they are immune to liability under the TPRL. The record establishes that Skyline's Credentials Committee

and its Medical Executive Committee are "medical review committees" for purposes of Tenn. Code Ann. 63-6-219. In this regard see a definition of the medical review committee contained in Tenn. Code Ann. 63-6-219(c).

Plaintiff's claim is based on the belief that the defendants provided information to Skyline's Credentials Committee regarding plaintiff's application for privileges at Skyline. The record establishes that these individuals satisfy subsection (d)(2)'s definition of "persons providing information, whether as a witness or otherwise, to a medical review committee regarding the competence or professional conduct of a physician." As such, they have immunity from liability to any person" unless the information they provided was false and they had actual knowledge of its falsity. According to Tenn. Code Ann. 63-6-219(d)(3), the defendants will be presumed to enjoy this immunity unless plaintiff can show they are ineligible.

We have previously noted that plaintiff, as to Dr. Everett, testified that he did not have acknowledge or information that would suggest that what Everett may have said was untrue or was a lie." The material submitted by plaintiff in support of his claim against Everett is the telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of a telephone conversation by Dr. Everett. However, under Tenn. Code Ann. 63-6-219 "all information, interviews, incident or other reports, statements, memoranda or other data furnished to any (medical peer review) committee" are privileged from discovery. The telephone verification form falls within this

category, and therefore would be inadmissible at trial. Although the facts relied upon by plaintiff need not be in admissible form, they "must be admissible at the trial." Byrd, 215-16. Plaintiff has failed to establish a disputed issue of material fact as to Everett's ineligibility for immunity, and summary judgment was appropriate in his case.

Plaintiff's support for his claim against Dr. Crowder is another telephone evaluation form prepared by an agent of Skyline's Credentials Committee listing notes of an alleged telephone conversation with Dr. Crowder. [2] Under Tenn. Code Ann. 63-6-219(e), however, this form is privileged and would not be admissible at trial. Plaintiff also presented minutes from a meeting of Skyline's Credentials Committee as circumstantial evidence of what Dr. Crowder told the Credentials Committee.[3] These minutes are also privileged from discovery pursuant to Subsection (e).

---

[2] Dr. Crowder is not mentioned by name in the minutes.

[3] Although the minutes refer to comments made by "the former Chief of Staff at Crockett," Dr. Crowder is not mentioned by name in the minutes.

The only other material presented by plaintiff in support of his claim is a letter dated February 22, 2002 and addressed to Skyline's Credentials Committee regarding plaintiff's application for privileges. The letter is written on Dr. Crowder's stationary, but it was not signed. The Record

indicates this copy of the letter was sent to Plaintiff by Dr. Crowder's clinic, assuming arguendo that the letter is admissible, it does not create a disputed issue of material fact as to whether Dr. Crowder supplied false information to Skyline because plaintiff has not presented any evidence that any of the information in the letter is false. Therefore, summary judgment in favor of Dr. Crowder was properly entered by the Trial Court.

In support of plaintiff's claim against Mr. Buck, plaintiff presented a third telephone verification form prepared by Skyline's CEO, Robert Klein. Klein is a member of Skyline's Credentials Committee. Robert Klein listed notes of a conversation with Buck regarding plaintiff's application for privileges at Skyline. Under Subsection (e), however, this form is privileged and would be inadmissible at trial. This form is the only evidence presented by plaintiff regarding Buck's communications with Skyline's Credentials Committee. Plaintiff therefore, has not established what information was provided by Buck, and hence, cannot establish whether that information was true or false. Accordingly, summary judgment was appropriate for Mr. Buck.

The parties do not dispute that Dr. Everett and Mr. Buck are employees of Crockett, and "(A)n employer may be held liable for the torts committed by his or her employees while performing duties within the scope of employment." White v. Revco Disc. Drug Ctrs., Inc, 33 S.W.3d 713, 718 (Tenn. 2000). Yet, "a principal may not be held vicariously liable under the doctrine of respondent superior based upon the acts of its agent . . . when the right

of action against the agent is extinguished by operation of law . . . ." Johnson v. LeBonheur Children 's Med. Ctn, 74 S.W.3d 338, 345 Tenn. 2002), see also Graham v. Miller, 187 S.W.2d 622, 625-26 Tenn. 1945); Raines v. Mercer, 55 S.W.2d 263, 264 Tenn. 1932). We have concluded that Dr. Everett and Mr. Buck are entitled to immunity. Plaintiff's right of action against these agents is extinguished by operation of law, and summary judgment in Crockett's favor was appropriate.

Plaintiff s Complaint did not clearly state how Lifepoint could be held liable for intentional interference with the business relationship between Plaintiff and Skyline. During depositions, Plaintiff asserted that Lifepoint committed this tort through the actions of its employees. Plaintiff alleged that one of these employees, Mr. Gracey "failed to put adequate policies and procedures in effected deal appropriately with false allegations that had been made against (Plaintiff)during (Plaintiff s) tenure at Crockett." Plaintiff also alleged that another Lifepoint employee, Mr. Kunkel, made false statements to Skyline regarding Plaintiff s lease payments at Crockett[4]

[4] According to Lifepoint's Brief William Gracey is Lifepoint's Chief Operations Officer

[5] According to Lifepoint's Brief Neil Kunkel is Lifepoint's in-house counsel.

Plaintiff does not allege that Mr. Gracey communicated with Skyline's Credentials Committee, but whatever immunity was provided by Term. Code Ann. j 63-6-219, Mr. Gracey's alleged conduct does not support a claim for intentional interference with a business relationship. The tort of intentional interference with business relationships requires intentional conduct. Our Supreme Court outlined the elements of this tort as follows:

We also hold that liability should be imposed on the interfering party provided that the plaintiff can demonstrate the following: (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general; (3) the defendant's intent to cause the breach or termination of the business relationship; (4) the defendant's improper motive or improper means; and finally, (5) damages resulting from the tortious interference.

Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 701 (Teen. 2002). (emphasis supplied). Plaintiff does not allege that Gracey intended to terminate plaintiff's business relationship with Skyline. Instead, Plaintiff asserts that Gracey "failed to put adequate policies and procedures into effect." This allegedly negligent conduct is insufficient to satisfy the third element of plaintiff's claim, which requires intentional conduct.

Plaintiff alleges that Kunkel falsely told representatives of Skyline's Credentials Committee that Plaintiff had "unpaid lease amounts at Crockett." If plaintiff s belief that Kunkel provided information to Skyline's Credentials Committee is correct, then Kunkel would be entitled to immunity pursuant to Tenn. Code Ann. j 63-6-219(d)(2), unless the information he provided was false and he had actual knowledge of its falsity. Plaintiff provided no evidence showing that Mr. Kunkel's statement was false. For these reasons, the plaintiff has failed to establish his claim against Lifepoint, and summary judgment was appropriate as to this defendant.

The foregoing renders the remaining issues moot, and we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to the plaintiff Bradley S. Logan, M.D.

HERSCHEL PICKENS FRANKS, P.J.
IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED
Jan 2 7 2005
Clerk of the Courts

BRADLEY S. LOGAN, M.D. v. LEON EVERETT, M.D., VIRGIL CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC., and LIFEPOINT HOSPITALS, INC.

Circuit Court for Davidson County
No. 02-C2090

No. M2005-00012-COA-R3-CV

JUDGMENT

This cause coming on to be heard upon the record on appeal from the Trial Court, briefs and argument of counsel, upon consideration whereof, this Court is of the opinion that there is no reversible error.

In accordance with the opinion of the Court filed herein, it is, therefore, ordered and decreed by this Court that the order of the Trial Judge is affirmed. The cause is remanded to the Trial Court.

Costs of this appeal are taxed against plaintiff, Bradley S. Logan, M.D., for which execution may issue if necessary.

PER CURIAM

Court of Appeals - Middle Division
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407
(615) 741-2681

Bradley S. Logan. M.D.
2202 N. West Shore Blvd., Suite 20O
Tampa. FL 33607

Date Printed: 01/27/2006
Notice Date: 01/27/2006
Case Style: Bradley S. Logan, M.D. v. Leon Everett, M.D., Virgil H. Crowder, M,D., Jack Buck, Crockett Hospital. LLC, and LifePoint Hospitals, Inc.
Case Number: M2005-00012-COA-R3-CV
Action: Date Filed: 01/27/2006 Judgment Filed in the Court of Appeals ::
Trial Court: Davidson County Circuit Court
Trial Court Number: 02C-2090

The judgment was filed on the above date. If an application for permission to appeal in the Tennessee Supreme Court is made pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure, you must file an original and six copies of the application with the Appellate Court Clerk. ** You must attach a copy of the Opinion of the Court of Appeals to each application. The application must be filed within 60 days after the Court of Appeal's judgment was filed. NO EXTENSIONS WILL BE GRANTED. If the Appellant wishes to file an application for permission to appeal, the Appellant should check with the Appellate Court Clerk's office to verify the need for filing an additional

bond for costs. If the Appellee wishes to file an application or permission to appeal, the application must be accompanied by an appeal bond as provided for in Rule 6 of the Tennessee Rules of Appellate Procedure.

COMMENT:
Costs of this appeal are taxed against plaintiff, Bradley S. Logan, M.D., for which execution may issue if necessary.

KAM

C: Robert Lee Trentham
Andrew S. Naylor
Taylor Bradford Mayes

Court of Appeals - Middle Division
100 Supreme Court Building
Nashville, TN 37219-1407
(615) 741-2681

Bradley S. Logan, M.D.
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Date Printed:	01/27/2006
Notice Date:	01/27/2006
Case Style:	Bradley S. Logan, M.D. v. Leon Everett, M.D., Virgil H. Crowder, M.D., Jack Buck, Crockett Hospital, LLC, and Lifepoint Hospitals, Inc.
Case Number:	M2005-000 12-COA-R3-CV
Action:	Date Filed: 01/27/2006 Court Opinion: Majority Opinion Filed in the Court of Appeals ::
Trial Court:	Davidson County Circuit Court
Trial Court Number:	02C-2090

The Appellate Court Clerk's Office has entered the above action in the Justice Information Tracking System. Judgment of the Circuit Court Affirmed and Remanded.

KAM

C: Robert Lee Trentham
Andrew S. Naylor
Taylor Bradford Mayes
Judge Hamilton V. Gayden, Jr,

Appendix 2

Denial of Application
Supreme Court of Tennessee

Supreme Court – Middle Division
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407
(615) 741-2681

Bradley S. Logan, M.D.
2202 N. West Shore Blvd., Suite 200
Tampa, FL 33607

Date Printed: 08/28/2006
Notice Date: 08/28/2006
Case Style: Bradley S. Logan, M.D. v. Leon Everett, M.D., Virgil H. Crowder, M.D., Jack Buck, Crockett Hospital, LLC, and LifePoint Hospitals, Inc.
Case Number: M2005-00012-SC-R11-CV
Action: Date Filed: 08/28/2006 COURT ORDER FILED: Related to Rule Specific Motion or Application: Denying TRAP Rule 11 Application::
Trial Court: Davidson County Circuit Court
Trial Court Number: 02C-2090

The Appellate Court Clerk's Office has entered the above action in the Justice Information Tracking System.

CRV

C: Robert Lee Trentham

Andrew Naylor
Taylor Bradford Mayes

Appellate Court Clerk's web page:
http//www.incourts.gov/geninfo/AppellClerk/AppellateClerksWeb.htm

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BRADLEY S. LOGAN V. LEON EVERETT, M.D., ET AL.

No. M2005-00012-SC-R11-CV

ORDER

Upon consideration of Bradley S. Logan's application for permission to appeal and the record before us, the application is denied.

PER CURIAM

Appendix 3
Tenn.Code Ann. 63-6-219

Legislative policy declaration – Medical review committees – Immunity of members – Confidentiality of records – Short Title

(a) this section shall be known and may be cited as the "Tennessee Peer Review Law of 1967."

(b) (1) In conjunction with the applicable policies of the Health Care Quality Improvement Act of 1986 (42 U.S.C. §§ 11101-11152), it is the stated policy of Tennessee to encourage committees made up of Tennessee's licensed physicians to candidly, conscientiously, and objectively evaluate and review their peer's professional conduct, competence, and ability to practice medicine.

Tennessee further recognizes that confidentiality is essential both to effective functioning of these peer review committees and to continued improvement in the care and treatment of patients.

(2) As incentive for the medical profession to undertake professional review, including the review of health care costs, peer review committees must be protected from liability for their good-faith efforts.

To this end, peer review committees should be granted certain immunities relating to their actions undertaken as part of their responsibility to review, discipline, and educate the profession.

In instances of peer review committees examining the appropriateness of physician's fees, this immunity must also extend to restraint of trade claims under title 47, chapter 25.

(c) As used in this section, "medical review committee" or "peer review committee" means any committee of a state or local professional association or society, including impaired physician review committees, programs, malpractice support groups and their staff personnel, or a committee of any licensed health care institution, or the medical staff thereof, or any committee of a medical care foundation or health maintenance organization, preferred provider organization, individual practice association or similar entity, the function of which, or one (1) of the functions of which, is to evaluate and improve the quality of health care rendered by providers of health care service to provide intervention, support, or rehabilitative referrals or services, or to determine that health care services rendered were professionally indicated, or were performed in compliance with

the applicable standard of care, or that the cost of health care rendered was considered reasonable by the providers of professional health care services in the area and includes a committee functioning as a utilization review committee under the provisions of Public Law 89-97 (42 U.S.C. §§ 1395-1395pp) (Medicare Law), or as a utilization and quality control peer review organization under the provisions of the Peer Review Improvement Act of 1982, Public Law 97-248, §§ 141 – 150, or a similar committee or a committee of similar purpose, to evaluate or review the diagnosis or treatment or the performance or rendition of medical or hospital services which are performed under public medical programs of either state or federal design.

(d) (1) All state and local professional associations and societies and other organizations, institutions, foundations, entities and associated committees as identified in subsection (c), physicians, surgeons, registered nurses, hospital administrators and employees, members of boards of directors or trustees of any publicly supported or privately supported hospital or other such provider of health care, any person acting as a staff member of a medical review committee, any person under a contract or other formal agreement with a medical review committee, any person

who participates with or assists a medical review committee with respect to its functions, or any other individual appointed to any committee, as such term is described in subsection (c), is immune from liability to any patient, individual or organization for furnishing information, data, reports or records to any such committee or for damages resulting from any decision, opinions, actions and proceedings rendered, entered or acted upon by such committees undertaken or performed within the scope or function of the duties of such committees, if made or taken in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.

Such immunity also shall extend to any such entity, committee or individual listed in this subsection when that entity, committee, or individual provides, or attempts to provide, assistance directly related to and including alcohol or drug counseling and intervention through an impaired professional program, or if none, through a requesting professional society, to any title 63 licensee, or applicant for license.

Physicians health programs and physicians health peer review committees shall be immune from liability for providing intervention, referral, and other support services to the

minor children or spouse or both of physicians.

(2) Notwithstanding the provisions of subdivision (d)(1), any person providing information, whether as a witness or otherwise, to a medical review committee regarding the competence or professional conduct of a physicians is immune from liability to any person, unless such information is false and the person providing it had actual knowledge of such falsity.

(3) A member of a medical review committee, or person reporting information to a medical review committee, is presumed to have acted in good faith and without malice. Any person alleging lack of good faith has the burden of proving bad faith and malice.

(e) All information, interviews, incident or other reports, statements, memoranda or other data furnished to any committee as defined in this section, and any findings, conclusions or recommendations resulting from the proceedings of such committee are declared to be privileged. All such information, in any form whatsoever, so furnished to, or generated by, a medical peer review committee, shall be privileged. The records and proceedings of any such committees are confidential and shall be used by such committee, and the members thereof only in the exercise of the proper functions of the committee, and shall not be

public records nor be available for court subpoena or for discovery proceedings.

One (1) proper function of such committees shall include advocacy for physicians before other medical peer review committees, peer review organizations, health care entities, private and governmental insurance carriers, national or local accreditation bodies, and the state board of medical examiners of this or any other state. The disclosure of confidential, privileged peer review committee information to such entities during advocacy, or as a report to the board of medical examiners under § 63-6-214(d), or to the affected physician under review, does not constitute either a waiver of confidentiality or privilege. Nothing contained herein applies to records made in the regular course of business by a hospital or other provider of health care and information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented during proceedings of such committee.

(f) If any provision of this section, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions of this section are declared to be severable.

FILED
MAR 2 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1079

In the Supreme Court of the United States

BRADLEY S. LOGAN, M.D.,

Petitioner,

v.

LEON EVERETT, M.D., VIRGIL CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC, and LIFEPOINT HOSPITALS, INC.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Tennessee

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether review from a decision from the Court of Appeals of Tennessee or the Supreme Court of Tennessee is appropriate under 28 U.S.C. § 1254(1).

2. Whether Petitioner presents compelling reasons to grant the Petition where Petitioner fails to claim that a state court of last resort decided a federal question in a way that conflicts with a decision of another state court of last resort or of a United States court of appeal; as Petitioner failed to present in the state courts the threshold federal constitutional issue of violation of due process other than by a single citation in his appellate brief to the word "constitutional," and no federal constitutional issue was ever decided by the Court of Appeals of Tennessee or the Supreme Court of Tennessee.

3. Whether Petitioner complied with the procedural requirements of a petition for writ of certiorari as required by the United States Supreme Court Rules to grant the Petition.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent LifePoint Hospitals, Inc., hereby discloses that it is not a subsidiary of any parent corporation, nor does any publicly held company own ten percent or more of its stock.

Respondent Crockett Hospital, LLC, hereby discloses that it is a Limited Liability Company which is a wholly owned subsidiary of LifePoint Hospitals, Inc., through its subsidiaries.

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INTRODUCTION

The Court does not have jurisdiction to hear this case and the Petition should be denied. Certiorari is sought pursuant to 28 U.S.C. § 1254(1), which permits review by this Court from cases in the federal courts of appeal by writ of certiorari. Here, the Petitioner seeks review of a ruling by the Supreme Court of Tennessee not to consider an appeal from the Court of Appeals of Tennessee. This matter has never been heard in a federal court, as is required by § 1254(1). Further, the petition does not present any federal issue within this Court's jurisdiction to review. Petitioner has never raised a federal question in the lower state courts. Therefore, the Court is without jurisdiction to review the state court decision, and the Petition should be denied.

STATUTORY AUTHORITY

24 U.S.C. § 1254(1) Courts of appeals; certiorari; certified questions

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE

A. Procedural History

Petitioner filed his first Complaint against Leon Everett, M.D. ("Dr. Everett") and "John Does A thru I," in the Circuit Court for Davidson County, Tennessee, alleging, inter alia, that Dr. Everett and others tortiously interfered with a contract between Petitioner and Skyline Medical Center. Logan v. Everett, No. M2005-00012-COA-R3-CV (Tenn. Ct. App. Jan. 27, 2006).

Petitioner then twice amended his Complaint to add various parties, including Jack Buck ("Mr. Buck"), Crockett Hospital, LLC ("Crockett"), and LifePoint Hospitals, Inc. ("LifePoint") and to allege an intentional interference with business relationships claim.

Dr. Everett filed a Motion for Summary Judgment based on the following grounds: (1) because this matter arises out of a medical staff peer review process, Dr. Everett is immune from liability as a matter of Tennessee Peer Review Law, T.C.A. § 63-6-219(d)(2), for providing information to Skyline Hospital's credentialing committee that was investigating Petitioner pursuant to his request; (2) as a condition of the Skyline credentialing process, Petitioner agreed to release from liability any person who provided information in good faith to Skyline Medical Center's medical staff; and (3) there is no record evidence that Dr. Everett took any action with malice, knowledge, or bad faith to interfere with Petitioner's application for privileges. The Circuit Court granted Dr.

Everett's Motion for Summary Judgment.[1] No questions of federal law were raised or decided at the trial court level.

Consequently, Mr. Buck, Crockett, and LifePoint filed a Motion for Summary Judgment based on the same grounds presented by Dr. Everett. In response to this Motion, Petitioner attempted to introduce into the record documents and other evidence created, prepared, or otherwise used by the Skyline Medical Credentialing Committee during its review of Petitioner's application for privileges at that hospital. Because these documents are not discoverable under Tennessee Peer Review Law, T.C.A. § 63-6-219, Skyline, Skyline's CEO, Robert Klein, and Mr. Buck moved the Court for a protective order barring such documents from the record. On November 17, 2004, the Court granted the Motion for Protective Order and the Motion for Summary Judgment on behalf of Mr. Buck, Crockett, and LifePoint. Again, the trial court never considered or ruled upon a question of federal law.

Petitioner filed an appeal to the Court of Appeals of Tennessee on December 17, 2004, addressing the following four issues only:

(1) What is the extent of the privilege from discovery created by the Tennessee Peer Review Law of 1967.

(2) Whether summary judgment was appropriate because the Tennessee Peer Review Law of 1967 bars any claim for liability against the Appellees.

---

[1] The Court also granted Virgil Crowder, M.D.'s Motion for Summary Judgment for the identical reasons it granted Dr. Everett's. Dr. Crowder is not represented by the undersigned.

(3) Whether summary judgment was appropriate because the Appellant released all of his claims against each Appellee.

(4) Whether summary judgment was appropriate because, as a matter of law, the Appellees did not tortiously interfere with the Appellant's "business relationship" with Skyline.

Appendix 1. On January 27, 2006, the Court of Appeals of Tennessee affirmed the trial court's decision. App. 1, p. 1. Petitioner then applied for review to the Supreme Court of Tennessee, which denied his application without comment. Logan v. Everett, No. M2005-00012-SC-R11-CV (Tenn. Aug. 28, 2006) (order denying application), Appendix 2. Throughout his appeals through the Tennessee State Courts, no federal issues were raised, argued, or decided.

B. Misstatements in Petitioner's Statement of the Case

Pursuant to Supreme Court Rule 15.2, Respondents are to set forth misstatements of fact or law in the Petition. In this matter, nearly the entire statement of the case presented by Petitioner is a misstatement because it consists of opinion and argument, wholly unsupported by the record in the courts below, and is inconsistent with the statements of fact and law in the decision of the Court of Appeals of Tennessee. Indeed, Petitioner offers no citation whatsoever to the record below. Sup. Ct. R. 14(g)(i).

The following statements from Petitioner's Statement of the Case are the only statements with which Respondents agree and that are not misstatements of fact or law.

(1) In 2001 he [Petitioner] entered negotiations with Skyline Medical Center in Nashville, Tennessee, which resulted in a Recruiting Agreement that was executed in November, 2001. Pet., p. 2

(2) The Petitioner filed in July 2002 an action in Circuit Court for interference with a business relationship and named Dr. Leon Everett as the Defendant with John Does listed as well. Pet., p. 3.

(3) A timely appeal was made to the Tennessee Court of Appeals and oral arguments were heard in October 2005. Pet., p. 4.

(4) The Court of Appeals upheld the district [sic] [circuit] court ruling of "absolute privilege." Pet., p. 4.

(5) A timely appeal was submitted to the Tennessee Supreme Court, which, without comment, denied the application on August 28, 2006. Pet., p. 4.

With the exception of the above-quoted material, Dr. Everett, Mr. Buck, Crockett, and LifePoint object to the remainder of the Petitioner's Statement of the Case because they are misstatements of either law or fact. As such, Petitioner's Statement of the Case should be disregarded in its entirety, and the Court should instead rely on Respondents' Statement of the Case as set forth above and as set forth in the opinion entered by the Court of Appeals of Tennessee. Appendix 1.

Further, Petitioner incorrectly states the procedural history of this matter. According to the Petition, Respondents "moved for summary judgment in September 2003, citing the Tennessee Peer Review Law [("TPRL")]; their motions were

denied and documents relating to the defendants' actions were introduced by the Petitioner and accepted by the district court in February 2004." Petition for Writ of Certiorari ("Pet."), p. 3. As set forth above, Respondents, Dr. Everett, individually, and Mr. Buck, Crockett, and LifePoint, collectively, moved for summary judgment based on TPRL immunity. Despite Petitioner's contention the "district judge" denied these motions, Dr. Everett's motion was granted by the circuit court judge of Davidson County, Tennessee on July 2, 2004, and Mr. Buck, Crockett, and LifePoint's motion was granted on November 14, 2004.[2]

REASONS FOR DENYING THE PETITION

A. The United States Supreme Court Is Without Jurisdiction To Review This Case.

1. Petitioner's Jurisdictional Basis, 28 U.S.C. 1254(1), Applies To Federal Circuit Courts Of Appeal Only And Is Inapplicable To Decisions Arising From State Courts.

This Petition does not present an issue within this Court's jurisdiction or that otherwise satisfies this Court's standards for review. Certiorari is sought pursuant to 28 U.S.C. § 1254(1), which permits review by this Court only from cases in the federal courts of appeals by writ of certiorari. See 22 James Wm. Moore et al., Moore's Federal Practice ¶ 403.02 (3d ed. 2006) ("28 U.S.C. § 1254 gives the Supreme Court jurisdiction to review decisions entered in a civil or criminal case by any of the eleven numbered circuit

---

[2] Petitioner also incorrectly prays that the Court remand this matter to the "district court." Pet., p. 8.

courts of appeals, the District of Columbia Circuit Court of Appeals and the Federal Circuit Court of Appeals."). The decisions from the Court of Appeals of Tennessee and the Supreme Court of Tennessee challenged by Petitioner are based upon a correct interpretation of Tennessee state law and the Petition does not present any federal issue within this Court's jurisdiction to review. Petitioner's claims were never before any of the eleven numbered circuit courts of appeal, the District of Columbia Circuit Court of Appeals or the Federal Circuit Court of Appeals, and, therefore, the petition fails due to lack of jurisdiction under 28 U.S.C. § 1254, and it should thus be denied.

2. Denial Of The Petition For Writ Of Certiorari Is Proper Where The Court of Appeals of Tennessee Based Its Decision On A State Question, The Supreme Court of Tennessee Denied The Application For Review Without Comment, And No Federal Question Was Ever Presented Or Decided.

Petitioner also tries to invoke the Court's jurisdiction by claiming he raised a federal constitutional issue in state court. According to Petitioner, because in his lower court briefing he used the word "constitutional" in the context of U.S. v. Nixon, 418 U.S. 683 (1974), he has sufficiently presented a federal issue for review. Pet., p. 2. This, of course, is not the law and no questions of federal law were ever raised during the state court proceedings. Accordingly, with no questions of federal law ever raised below, this Court does not have jurisdiction and the Petition should be denied.

In order for Supreme Court review, a federal claim be asserted, it must be asserted at the proper time, and it must be asserted in the proper manner by pleading, motion or other

appropriate action under the state system of pleading and practice. Hartford Life Ins. Co. v. Johnson v. Johnson, 249 U.S. 490, 493 (1919) (citing Atlantic Coast Line R.R. Co. v. Mims, 242 U.S. 532, 535 (1917)). Likewise, it has long been the general rule in Tennessee that constitutional questions not raised in the trial court will not be entertained on appeal. Lawrence v. Stanford, 855 S.W.2d 927, 929 (Tenn. 1983). The jurisdiction of this Court to review the proceedings of the state courts is limited to the specific instances of denials of federal rights, specially set forth in the state court and denied by the rulings and judgment of that court. Waters-Pierce Oil Co. v. Texas, 212 U.S. 89, 97 (1909). The Supreme Court is not called upon to review the findings of fact made in the state court, but accepts the findings of the court of the state upon matters of fact as conclusive. Id. (citations omitted). Where, as here, a federal question was never drawn into question or decided by any state court, it cannot be said that the decision of the state court conflicts with the Constitutional decisions of other state courts of last resort or of a United States Court of Appeal. Sup. Ct. R. 10(b).

Moreover, the Petitioner has the burden of showing that the federal issue was properly presented to the state court. Adams v. Robertson, 520 U.S. 83, 85 (1997). When the highest state court is silent on a federal question before this Court, it will assume that the issue was not properly presented below. Id. at 86. The aggrieved party bears the burden of defeating the assumption by demonstrating that the state court had a fair opportunity to address the federal question. Id. at 87, (quoting Webb v. Webb, 451 U.S. 493, 501 (1981)). Petitioner may rebut the assumption by establishing that the federal claim was raised at a time and manner required by state law.

Here, Petitioner fails to set forth when a federal question was raised, the method or manner of raising the question, the way in which the state court passed on that question, or specific portions of the record or summary with references to show that the federal question was timely and properly raised. Sup. Ct. R. 14.1(g)(i). A review of the Record below establishes why. The Petitioner has never, at any time below, ever raised a federal question. Petitioner twice amended his Complaint in this matter, and at no time did he ever add a claim for violation of any federal constitutional right, and the Court of Appeals of Tennessee never addressed a federal constitutional issue on appeal– of the four issues addressed by the Court of Appeals, not one is remotely related to a any type of federal question. Pet., App. p. xiii-ix. Petitioner presents no federal question, and the Supreme Court of Tennessee denied his application for appeal without comment. As previously stated, when the Tennessee Supreme Court is silent on a federal question before this Court, this Court should assume that the federal question was improperly raised in the lower court. Thus, at no time prior to filing his Petition has Petitioner raised any federal question and, therefore, the Court lacks jurisdiction on this basis. See Adams, 520 U.S. at 85.

Even though Petitioner mentions the alleged federal question in his Petition, he does not develop any argument based on federal Constitutional law or on a federal statute. Instead, he focuses on the believed improper interpretation of a Tennessee statute under applicable Tennessee case law by the Tennessee appellate courts. Because no federal issue was raised below or decided by either the Court of Appeals of Tennessee or the Supreme Court of Tennessee, this Court lacks jurisdiction over Petitioner's points of appeal. As such, the Petition should be denied.

B. The Petition Should Be Denied Because It Is Procedurally Deficient.

As explained above, Petitioner makes many misstatements of fact and law in his Statement of the Case and includes opinion, argument, and conjecture that are unsupported by the record. In addition, the Petition fails to comply with the United States Supreme Court Rules. Contrary to Rule 14.1(g)(i), Petitioner's Statement of the Case does not contain when the federal question was raised, the method or manner of raising the federal question, or the disposition of the lower court on the federal question. See also Live Oak Water Users' Assoc. v. Railroad Com. of California, 269 U.S. 354, 357 (1926). As discussed in Argument Section A. 2., Petitioner can not make such representations regarding when the federal question was raised because no federal question was raised below. Because of the procedural deficiencies this Court should deny the Petitioner's writ.

CONCLUSION

This matter does not arise out of the federal courts and no federal claims were ever raised by Petitioner in the lower courts. Accordingly, Petitioner fails to set forth any jurisdictional basis upon which this Court should grant the Petition for Writ of Certiorari and for these reasons the Petition should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX 1

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 12, 2005 Session

No. M2005-00012-COA-R3-CV

[Filed January 27, 2006]

BRADLEY S. LOGAN, M.D.	)
	)
v.	)
	)
LEON EVERETT, M.D., VIRGIL CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC., and LIFEPOINT HOSPITALS, INC.	)

Direct Appeal from the Circuit Court
for Davidson County, No. 02C-2090
Hon. Hamilton V. Gayden, Jr. Circuit Judge

Plaintiff sued defendants, claiming defendants intentionally interfered with a business relationship by making false and malicious statements about him. The Trial Court granted defendants summary judgment on the grounds defendants were immune pursuant to Tenn. Code Ann. § 63-6-210(d)(1)(2) for providing information to a credential committee investigating plaintiff. On appeal, we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, J., joined.

Bradley S. Logan, M.D., Nashville, Tennessee, *pro se*.

Robert L. Trentham and Taylor B. Mayes, Nashville, Tennessee, for Appellee, Virgil Crowder, M.D.

Andrew S. Naylor and Stanley E. Graham, Nashville, Tennessee, for Appellees, Leon Everett, M.D., Jack Buck, Crockett Hospital, LLC., and Lifepoint Hospitals, Inc.

OPINION

TRIAL COURT PROCEEDINGS

Plaintiff, a physician, sued Dr. Leon E. Everett and John Does A thru I, and averred he was a licensed physician, and that Dr. Everett practices medicine in Lawrenceburg, Tennessee where he is the Chief of the Medical Staff of Crockett Hospital.

The Complaint averred that in 2001 plaintiff began negotiations with Skyline Medical Center ("Skyline") with the purpose of moving his medical practice from Lawrenceburg, Tennessee, to Nashville, and that plaintiff and Skyline entered into a Recruiting Agreement wherein Skyline promised to guaranty plaintiff a minimum monthly income for the first year of his practice in Nashville. The promise was conditioned upon Plaintiff "obtaining and maintaining full medical staff privileges at [Skyline]" and engaging "in the

full-time private practice of medicine as [an] Ob/Gyn in [Nashville]" by January 1, 2002.[1] Plaintiff further averred that he applied for medical privileges at Skyline, but was informed that his application would be rejected due to negative statements made by individuals at Crockett Hospital. Further, that plaintiff learned that none of the physicians contacted by Skyline during the application process gave him a positive reference, and his Complaint concluded that defendants committed tortious interference with the contract between plaintiff and Skyline by making false and malicious statements in bad faith.

Subsequently, the Trial Court allowed plaintiff to amend his Complaint to add Virgil H. Crowder, M.D.; Crockett Hospital, LLC ("Crockett"); and LifePoint Hospitals, Inc. ("LifePoint") as defendants.

On December 3, 2003, Dr. Crowder filed a Motion for Summary Judgment and a Statement of Undisputed Facts. The Motion argued:

> [Dr. Crowder] made no statements whatsoever to representatives of [Skyline] concerning the application by the [P]laintiff... to [Skyline] for medical staff privileges and therefore, [Plaintiff's] claims against Dr. Crowder necessarily fail to state a claim upon which relief could be granted for intentional interference with a business relationship as a matter of law.

---

[1] Plaintiff did not engage in full time practice as an Ob/Gyn in Nashville by the January 1, 2002 deadline, and Skyline rescinded the Recruiting Agreement on February 20, 2002.

The Trial Court denied Dr. Crowder's Motion, and Dr. Everett then filed a Motion for Summary Judgment on the grounds that plaintiff had executed a Release, which released from liability, "all representatives of the hospital and its medical staff for their acts performed in good faith and without malice in connection with evaluating my application and my credentials and qualifications". A copy of the Release was filed, along with a Motion, as well as excerpts from the deposition of plaintiff. One of the more relevant exchanges from the deposition is:

Q: So you don't know what Dr. Everett said [to the credentials committee]?

A: Of course not.

Q: Do you have any knowledge or information that would tend to show or suggest that anything Dr. Everett may have said to any one was untrue or was a lie?

A: No.

Q: Do you have any facts or anything to show that would suggest that anything that Dr. Everett may have said to anyone with regard to your application at Skyline was made in bad faith?

A: Yes

. . .

Q: Okay. Tell me what the proof is, facts, or hearsay.

A: Okay .... Kelly Duggan [a Skyline attorney] communicated to me that none of the physicians that

were contacted by Skyline... gave [me] a positive reference. Mr. Klein [Skyline's CEO] has also said that it was the telephone conversation with physicians in Lawrenceburg that made the credentials committee uncomfortable.

Q: Anything else?

A: Dr. Everett has told me that he spoke to somebody at Skyline .... Dr. Everett has also told me that he told them that my charts were reviewed.

. . .

Q: And your charts were, in fact, reviewed?

A: Yes.

. . .

A: Okay. So then Dr. Neal [President of Skyline's medical staff] spoke to Dr. [Janice] Huckaby [Plaintiff's friend and colleague] and said that he spoke to the physicians in Lawrenceburg and that they did not give [me] a positive reference, that he took each of those persons off of the record and had a conversation with them that also made him feel uncomfortable.

Q: Anything else?

A: At this time, no.

Plaintiff responded to these Motions for Summary Judgment, but did not file responses to the Statement of

Undisputed Facts filed by Dr. Everett and Dr. Crowder. Regarding the doctors' arguments that they were immune pursuant to Tenn. Code Ann. § 63-6-219(d)(2), plaintiff argued that there was a factual issue as to whether this immunity applied because this immunity is conditioned on acting in good faith without malice and the immunity could be lost if the doctors provided false information and actually knew the information was false. Regarding the doctors' assertion there was no evidence to show that they engaged in the alleged tortious conduct, plaintiff argued that his search for evidence was hampered by assertions of the peer review privilege and that the documents evidencing communication between representatives of Skyline and doctors at Crockett raised the possibility of false and malicious statements.

Two of the documents relied on by plaintiff, were telephone verification forms, one of which lists comments made by the Chief of Staff at Crockett (i.e. Dr. Everett). The comments listed on the form include the following: "has had some issues–now resolved[;] lots of politics[;] poor relationship with peers[;] some complications–reviews done[;] recommended.". The other form is not dated and lists comments made by a former Chief of Staff at Crockett. Plaintiff also attached, as an exhibit to his Response to Dr. Crowder's Motion, a letter dated February 22, 2002, written on Dr. Crowder's stationary, which was not signed and addressed to Skyline's Credentials Committee. The letter included the following comments:

> [Plaintiff's] charts were reviewed at my request because I thought that his surgical complication rates might be high .... The Surgery [Committee] had reviewed all instances of complications for [Plaintiff] as a regular part of its function. No finding of complications was ever categorized as other than "a

> known complication of surgery appropriately handled."... [Plaintiff's] complication rate was compared to system wide averages and his average was actually below the system average. Outside review was performed. The Medical Executive Committee met, reviewed the findings and no recommendation for anything other than observation for 6 months was made.

The Trial Court granted Dr. Crowder's and Dr. Everett's Motions for Summary Judgment.

Plaintiff then filed a Motion to Amend his Complaint and added Jack Buck as a Defendant. This Complaint averred that Buck was the Chief Executive Officer of Crockett and that he committed intentional interference with the business relationship between Plaintiff and Skyline by knowingly making false statements to Skyline's CEO about Plaintiff's abilities.

Crockett, LifePoint, and Mr. Buck filed a Motion for Summary Judgment and Statement of Undisputed Facts based upon the same grounds presented by Drs. Everett and Crowder. In plaintiff's Response to the Motion, plaintiff attached a telephone verification form listing comments regarding plaintiff made by Buck to Robert Klein, Skyline's CEO. The form listed these comments:

> very negative overall; both clinical and financial issues[;] '4 months behind rent'[;] behind in ultrasound lease payments[;] spoke of numerous surgical mishaps; 'sloppy' [;]... bad reputation.

Plaintiff alleged these comments evidenced false statements made by Buck, and served a subpoena upon Klein for a

deposition and specified documents, as well as a subpoena upon Skyline to produce specified documents. At these parties' request, the Trial Court entered a Protective Order denying discovery and granted defendants' Motion for Summary Judgment.

ISSUES RAISED ON APPEAL

1. What is the extent of the privilege from discovery created by the Tennessee Peer Review Law of 1967?

2. Whether summary judgment was appropriate because the Tennessee Peer Review Law of 1967 bars any claim for liability against the Appellees.

3. Whether summary judgment was appropriate because the Appellant released all of his claims against each Appellee.

4. Whether summary judgment was appropriate because, as a matter of law, the Appellees did not tortiously interfere with the Appellant's "business relationship" with Skyline.

Our review of summary judgments are *de novo* "without any presumption of correctness accorded the trial court's judgment." *Guy v. Mutual of Omaha Ins. Co.,* 79 S.W.3d 528, 534 (Tenn. 2002). Our task in deciding the propriety of a summary judgment is to determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guy, (quoting Tenn. R. Civ. P. 56.04). When making this determination,

"[c]ourts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." *Staples v. CBL & Assocs., Inc.,* 15 S.W.3d 83, 89 (Tenn. 2000). "If both the facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." *Seavers v. Methodist Med. Ctr. of Oak Ridge,* 9 S.W.3d 86, 91 (Tenn. 1999).

The moving party must do more than make conclusory assertions "that the nonmoving party has no evidence." *Byrd v. Hall,* 847 S.W.2d 208, 215 (Tenn. 1993). Instead, the moving party must either "affirmatively negate an essential element of the nonmoving party's claim" or "conclusively establish an affirmative defense that defeats the nonmoving party's claim." *Id.* at 215 n.5. At this juncture, the noumoving party may not simply rely upon "the allegations or denials of his pleadings," but must establish the existence of genuine disputed issues of material fact. *Id.*

Defendants argued below, and on appeal, that the Tennessee Peer Review Law of 1967 (the "TPRL") creates an absolute privilege protecting their communications with Skyline regarding Plaintiff's application for privileges. Plaintiff counters that the privilege from discovery is not absolute.

The General Assembly enacted the TPRL in order to create an "incentive for the medical profession to undertake professional review." Tenn. Code Ann. § 63-6-219(b)(2) (2005). As part of this incentive, the General Assembly decided that "peer review committees must be protected from liability for their good faith efforts." The TPRL includes the following provision:

> (d)(1) All state and local professional associations and societies and other organizations,...**any person who participates with or assists a medical review committee** with respect to its functions, or any other individual appointed to any committee, as such term is described in subsection (c), **is immune from liability to any... individual** or organization **for furnishing information... to any such committee** or for damages resulting from any decision... entered or acted upon by such committees undertaken or performed within the scope or function of the duties of such committees, **if made or taken in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.**

Tenn. Code Ann. § 63-6-219(d)(1) (2005). (Emphasis supplied). As the foregoing establishes, immunity is conditioned on acting "in good faith, and without malice, and on the basis of facts reasonably known or reasonably believed to exist." In 1988, General Assembly amended the original Act, as it applies to those who provide information to medical review committees. 1988 Tenn. Pub. Acts, ch. 609, § 2. The following language was added to the Act:

> (2) Notwithstanding the provisions of subdivision (d)(1), **any person providing information**, whether as a witness or otherwise, **to a medical review committee** regarding the competence or professional conduct of a physician **is immune** from liability to any person, **unless such information is false and the person providing it had actual knowledge of such falsity**.

Tenn. Code Ann. § 63-6-219(d)(2) (2005) (emphasis supplied). The foregoing phrase establishes that any further

consideration of an information-provider's good faith or malice is unnecessary. *Ironside v. Simi ValleyHosp.*, 188 F.3d 350, 353 (6th Cir. 1999).

Beyond a showing that they assisted a review committee, participants in the medical review process do not have to prove their eligibility for immunity. Instead, "[a] member of a medical review committee, or person reporting information to a medical review committee, is presumed to have acted in good faith and without malice. Any person alleging lack of good faith has the burden of proving bad faith and malice." Tenn. Code Ann. § 63-6-219(d)(3). Thus, where a plaintiff wishes to demonstrate that a provider of information to a medical review committee is ineligible for immunity, the plaintiff must prove the information was false and the provider had actual knowledge of its falsity.

The TPRL also protects the information submitted to and generated by such review committees by making it confidential and privileged. Tenn. Code Ann. § 63-6-219(e). Plaintiff argues there is an implied exception to this privilege which gives the party opposing immunity the right to discover information otherwise privileged under subsection (e). We cannot agree with this interpretation of the provision. The General Assembly expressed its intent regarding subsection (e) as follows:

> [I]t is the stated policy of Tennessee to encourage committees made up of Tennessee's licensed physicians to candidly, conscientiously, and objectively evaluate and review their peers' professional conduct, competence, and ability to practice medicine. Tennessee further recognizes that confidentiality is essential both to effective functioning of these peer review committees and to continued

improvement in the care and treatment of patients.

Tenn. Code. Ann. § 63-6-219(b)(1).

According to the plain terms of Subsection (e), the privilege from discovery is broad and protects "[a]ll information, interviews, incident or other reports, statements, memoranda or other data furnished to any [medical peer review] committee." The plain terms of this section provide for only three limitations in the privilege's scope. First, the privilege only protects information "furnished to, or generated by, a medical peer review committee." Second, the privilege only applies in civil actions. Third, the privilege applies to neither "records made in the regular course of business" nor to "records otherwise available from original sources" which are simply presented during the proceedings of a medical peer review committee.

Under plaintiffs interpretation of subsection (e), a participant in the peer review process could not assert his immunity without simultaneously losing enjoyment of the privilege from discovery created by the subsection. Accordingly, plaintiff's interpretation would have the effect of rendering the privilege created by subsection (e) effectively void. "It is a well-settled principle of statutory construction that statutory provisions should be construed in a manner that will not render them meaningless or useless." *Hoyer-Schlesinger-Turner, Inc. v. Benson,* 479 S.W.2d 223, 225 (Tenn. 1972).

Plaintiff argues that the Tennessee Supreme Court has recognized an implied exception to the peer review privilege in *Eyring v. Fort Sanders Parkwest Med. Ctr., Inc.,* 991 S.W.2d 230 (Tenn. 1999). In *Eyring,* the plaintiff was a licensed physician with staff privileges at the defendant

hospital, and his privileges were later revoked by a medical review committee at the hospital. The plaintiff sued the hospital, charging intentional interference with a business relationship. The Trial Court allowed the plaintiff to conduct discovery of peer review participants for the limited purpose of allowing the plaintiff to discover the participants' good faith, malice, and whether they acted on the basis of facts reasonably known or believed to exist, but declined to allow plaintiff to conduct discovery regarding the peer review process itself.

Prior to 1999, the second sentence of the peer review privilege provision stated, "All such information, in any form whatsoever, so furnished to, or generated by, a medical review committee shall be privileged communication subject to the laws pertaining to the attorney-client privilege." 1994 Tenn. Pub. Acts, ch. 732, § 6. The plaintiff argued that the language "subject to the laws pertaining to the attorney-client privilege" granted an implied exception to the confidentiality privilege, which argument was rejected by this Court. The plaintiff appealed to the Supreme Court, which affirmed the Trial Court's approach with the following reasoning:

> This statute creates a broad privilege from disclosure for "[all] information, interviews, incident or other reports, statements, memoranda or other data... and any findings conclusions or recommendations resulting from the [committees'] proceedings." **In our view, this broad language encompasses any and all matters related to the peer review proeess itself. We reject Eyring's contention that the statute grants an implicit right to any information "furnished to or resulting from the proceedings" of the peer review committees.**

> It appears, however, that the broad language extending the privilege from discovery must be reconciled with the statutory requirement that the plaintiff bear the burden of producing evidence of malice and bad faith. **We therefore agree with the trial court's ruling allowing Eyring to conduct discovery for the limited purpose of investigating the committee members' good faith, malice, and reasonable knowledge or belief, but prohibiting any inquiry into the peer review process itself.** Accordingly, we conclude that . . . the broad language of the statute encompasses any and all matters related to the peer review process.

Eyring, p.239 (citations omitted) (emphasis supplied).

The Supreme Court clearly rejected the plaintiff's contention that the statute grants an implicit right to any information furnished to or resulting from the proceedings of the peer review committees, and prohibits any inquiry into the peer review process itself. In the Court's words, "the broad language of the statute encompasses any and all matters related to the peer review process."

We conclude there is no implied exception to the rights of privilege and confidentiality created by the statute.

Next, plaintiff argues that the immunity from civil liability is conditional, and whether the relevant conditions have been satisfied is a genuine issue of material fact. Defendants counter that summary judgment was appropriate because they are immune to liability under the TPRL.

The record establishes that Skyline's Credentials Committee and its Medical Executive Committee are "medical review committees" for purposes of Tenn. Code Ann. § 63-6-

219. In this regard see a definition of the medical review committee contained in Tenn. Code Arm. § 63-6-219(c).

Plaintiff's claim is based on the belief that the defendants provided information to Skyline's Credentials Committee regarding plaintiff's application for privileges at Skyline. The record establishes that these individuals satisfy subsection (d)(2)'s definition of "person[s] providing information, whether as a witness or otherwise, to a medical review committee regarding the competence or professional conduct of a physician." As such, they have "immunity from liability to any person" unless the information they provided was false and they had actual knowledge of its falsity. According to Tenn. Code Ann. § 63-6-219(d)(3), the defendants will be presumed to enjoy this immunity unless plaintiff can show they are ineligible.

We have previously noted that plaintiff, as to Dr. Everett, testified that he did not have any knowledge or information that would suggest that what Everett may have said "was untrue or was a lie." The material submitted by plaintiff in support of his claim against Everett is the telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of a telephone conversation with Dr. Everett. However, under Tenn. Code Aun. § 63-6-219(e) "[a]ll information, interviews, incident or other reports, statements, memoranda or other data furnished to any [medical peer review] committee" are privileged from discovery. The telephone verifieatiun form falls within this category, and therefore would be inadmissible at trial. Although the facts relied upon by plaintiff need not be in admissible form, they "must be admissible at the trial." *Byrd,* 215-16. Plaintiffhas failed to establish a disputed issue of material fact as to Everett's ineligibility for immunity, and summary judgment was appropriate in his case.

Plaintiff's support for his claim against Dr. Crowder, is another telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of an alleged telephone conversation with Dr. Crowder.[2] Under Tenn. Code Ann. § 63-6-219(e), however, this form is privileged and would not be admissible at trial. Plaintiff also presented minutes from a meeting of Skyline's Credentials Committee as circumstantial evidence of what Dr. Crowder told the Credentials Committee.[3] These minutes are also privileged from discovery pursuant to Subsection (e).

The only other material presented by plaintiff in support of his claim is a letter dated February 22, 2002 and addressed to Skyline's Credentials Committee regarding plaintiff's application for privileges. The letter is written on Dr. Crowder's stationary, but it was not signed. The Record indicates this copy of the letter was sent to Plaintiff by Dr. Crowder's clinic, assuming *arguendo* that the letter is admissible, it does not create a disputed issue of material fact as to whether Dr. Crowder supplied false information to Skyline because plaintiff has not presented any evidence that any of the information in the letter is false. Therefore, summary judgment in favor of Dr. Crowder was properly entered by the Trial Court.

In support of plaintiff's claim against Mr. Buck, plaintiff presented a third telephone verification form prepared by Skyline's CEO, Robert Klein. Klein is a member of Skyline's Credentials Committee. Robert Klein listed notes of a

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[2] Dr. Crowder's name is not mentioned on this form.

[3] Although the minutes refer to comments made by "the former Chief of Staff at Crockett", Dr. Crowder is not mentioned by name in the minutes.

conversation with Buck regarding plaintiff's application for privileges at Skyline. Under Subsection (e), however, this form is privileged and would be inadmissible at trial. This form is the only evidence presented by plaintiff regarding Buck's communications with Skyline's Credentials Committee. Plaintiff therefore, has not established what information was provided by Buck, and hence, cannot establish whether that information was true or false. Accordingly, summary judgment was appropriate for Mr. Buck.

The parties do not dispute that Dr. Everett and Mr. Buck are employees of Crockett, and "[A]n employer may be held liable for the torts committed by his or her employees while performing duties within the scope of employment." *White v. Revco Disc. Drug Ctrs., Inc.,* 33 S.W.3d 713, 718 (Tenn. 2000). Yet, "a principal may not be held vicariously liable under the doctrine of respondeat superior based upon the acts of its agent... when the right of action against the agent is extinguished by operation of law .... " *Johnson v. LeBonheur Children's Med. Ctr.,* 74 S.W.3d 338, 345 (Tenn. 2002); *see also Graham v. Miller,* 187 S.W.2d 622, 625-26 (Tenn. 1945); *Raines v. Mercer,* 55 S.W.2d 263, 264 (Tenn. 1932). We have concluded that Dr. Everett and Mr. Buck are entitled to immunity. Plaintiff's right of action against these agents is extinguished by operation of law, and summary judgment in Crockett's favor was appropriate.

Plaintiff's Complaint did not clearly state how LifePoint could be held liable for intentional interference with the business relationship between Plaintiff and Skyline. During depositions, Plaintiff asserted that LifePoint committed this tort through the actions of its employees. Plaintiff alleged that

one of these employees, Mr. Gracey,[4] "failed to put adequate policies and procedures in effect to deal appropriately with false allegations that had been made against [Plaintiff] during [Plaintiff's] tenure at Crockett." Plaintiff also alleged that another LifePoint employee, Mr. Kunkel,[5] made false statements to Skyline regarding Plaintiff's lease payments at Crockett.

Plaintiff does not allege that Mr. Gracey communicated with Skyline's Credentials Committee, but whatever immunity was provided by Tenn. Code Ann. § 63-6-219(d), Mr. Gracey's alleged conduct does not support a claim for intentional interference with a business relationship. The tort of intentional interference with business relationships requires intentional conduct. Our Supreme Court outlined the elements of this tort as follows:

> We also hold that liability should be imposed on the interfering party provided that the plaintiff can demonstrate the following: (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiffs business dealings with others in general; **(3) the defendantts intent to cause the breach or termination of the business relationship;** (4) the defendant's improper motive or improper means; and finally, (5) damages resulting from the tortious interference.

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[4] According to LifePoint's Brief, William Gracey is LifePoint's Chief Operations Officer.

[5] According to LifePoint's Brief, Neil Kunkel is LifePoint's in-house counsel.

Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 701 (Tenn. 2002). (emphasis supplied). Plaintiff does not allege that Gracey intended to terminate plaintiff's business relationship with Skyline. Instead, Plaintiff asserts that Gracey "failed to put adequate policies and procedures into effect." This allegedly negligent conduct is insufficient to satisfy the third element of plaintiff's claim, which requires intentional conduct.

Plaintiff alleges that Kunkel falsely told representatives of Skyline's Credentials Committee that Plaintiff had "unpaid lease amounts at [Crockett]." If plaintiffs belief that Kunkel provided information to Skyline's Credentials Committee is correct, then Kunkel would be entitled to immunity pursuant to Tenn. Code Ann. § 63-6-219(d)(2), unless the information he provided was false and he had actual knowledge of its falsity. Plaintiff provided no evidence showing that Mr. Kunkel's statement was false. For these reasons, the plaintiff has failed to establish his claim against LifePoint, and summary judgment was appropriate as to this defendant.

The foregoing renders the remaining issues moot, and we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to the plaintiff, Bradley S. Logan, M.D.

/s/
HERSCHEL PICKENS FRANKS, P.J.

APPENDIX 2

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

No. M2005-00012-SC-R11-CV

[Filed August 23, 2006]

BRADLEY S. LOGAN,	)
	)
v.	)
	)
LEON EVERETT, M.D., ET AL.	)
	)

ORDER

Upon consideration of Bradley S. Logan's application for permission to appeal and the record before us, the application is denied.

PER CURIAM